Statement of Rod Moore
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Reauthorization of the Magnuson Stevens Fishery Conservation and Management Act
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Mr. Chairman, Members of the Committee, my name is Rod Moore and I serve as the Executive Director of the West Coast Seafood Processors Association (WCSPA). Our Association represents shore-based seafood processing companies and associated businesses that are primarily located in Oregon, Washington, and California. Collectively, our members handle the majority of Pacific groundfish landed on the west coast, along with significant amounts of Pacific sardines, albacore tuna, and Pacific salmon – all species managed under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). In addition, our members process the majority of the Pacific shrimp and much of the Dungeness crab landed in west coast states, species that are managed under state authority. Our members range from literal mom and pop operations to some of the largest seafood companies in the United States and employ thousands of workers in harvesting, processing, transporting, and distributing seafood across the country and throughout the world.

The Pacific Fishery Management Council has four fishery management plans in place that generally regulate the fisheries that occur in federal waters: Coastal Pelagic Species (primarily sardines, anchovies, squid, and mackerel); Pacific Salmon; Highly Migratory Species (albacore and other tunas, most pelagic sharks); and Pacific Groundfish (including Pacific whiting or hake). However as we all know, neither fish nor those who attempt to catch them all live in discrete jurisdictional areas. Thus for many fishery management actions, there is significant involvement with state fish and wildlife agencies, tribal fishery managers (several coastal tribes have judicially recognized tribal fishing rights that extend into portions of the exclusive economic zone), international fishery management organizations, and bilateral entities. We have five extensive National Marine Sanctuaries off our coast, which requires interaction with NOAA's National Ocean Service. While there is very little ocean hydro-carbon extraction other than in some California state waters, we have a developing marine hydrokinetic energy (wind, wave, and current) industry that potentially can compete with fish harvesters for space in the ocean. Our anadromous species are affected by competing claims to water rights and the need to balance fishing, farming, power, flood control, and navigation issues on our major rivers. We have several different ESA-listed species – marine, anadromous, and amphibious – to avoid. And we have several hundred thousand marine mammals to contend with, including those that are happily devouring some of the afore-mentioned ESA-listed species.

Add to this mix the requirements of the National Environmental Policy Act, the Administrative Procedures Act, and several federal court rulings and you can see why fisheries management on the west coast is challenging, to say the least.

That is also why it is essential that the MSFCMA provide our fisheries managers with the maximum amount of flexibility consistent with sound science and reasonably prudent conservation.

Flexibility in Rebuilding
First and foremost on the need for flexibility in the Pacific Council area is a revision of section 304(e)(4) of the MSFCMA. Since enactment of this section in 1997, ten species have been designated as overfished under the Pacific Groundfish Fishery Management Plan. Three of those species fell within the 10-year rebuilding requirement and the rest have been exceptions due to the biology of the species. Two of the short-lived and one of the long-lived species have been fully rebuilt; the rest continue to act as "choke" species that hamper the harvest of abundant fish stocks.

Aside from the arbitrary time frame allowed for rebuilding under normal circumstances – 10 years is not any magic number given the vast differences in habitat, life history, and environmental conditions for fish stocks around the nation – our biggest problem results from a 9th Circuit Court opinion on how the language in this section is to be applied. Ruling on a case contesting the harvest levels set for the 2002 groundfish fishery, the court said the following:

> "Section 1854 contains two significant mandates that constrain the Agency's options in adopting a rebuilding plan for an overfished species. First, the time period must be "*as short as possible*," although the Agency may take into account the status and biology of the overfished species and the needs of fishing communities."

The practical effect of this ruling is that in setting catch levels for overfished species we must start with an assumption of zero fishing and incrementally add harvest amounts until we reach the point that is one step above economic devastation for fishing communities. This has led to absurdities where the Council has been forced to choose lower harvest limits even though analysis provided by its Scientific and Statistical Committee shows that a higher limit would allow rebuilding in the same year, albeit a few months later than the lower limit. In two cases involving harvest levels for 2013 – canary rockfish and darkblotched rockfish - this was a difference of 30 metric tons, a considerable disparity for species that are managed along the entire coast and must be shared by commercial, sport, and tribal fishermen. To put this in context, 30 metric tons of Canary Rockfish is 75% of the entire groundfish trawl allocation for that species for 2013. While the direct landed value of those fish is not significant, the indirect value is enormous: having more incidental species available would provide additional opportunity for commercial, sport and tribal harvesters to access abundant stocks of fish that currently go unharvested due to the choke species effect.

One way to resolve this issue would be to modify the existing language in section 304(e)(4)(i) to require rebuilding in a time period that is "as short as practicable." The intent of this change is not to allow fisheries managers unfettered permission to set harvest levels wherever they choose; rather, it lets them exercise some reasonable judgment so they could – for example – allow a fish stock to be rebuilt in December rather than January, which were the choices available for canary rockfish harvest this year.

A second problem exists with NMFS' interpretation of the MSFCMA. Under the National Standard 1 guidelines, a stock is considered overfished if it is below its minimum stock size threshold (MSST). Once designated as overfished, a rebuilding plan must be put in place and that rebuilding plan must remain in effect until the stock reaches a level equivalent to maximum sustainable yield (MSY). Essentially, you assume a direct correlation between the level of harvest and stock size. While this sounds great in theory, in fact there are a whole lot of things that influence stock growth, including our inability to accurately measure stock size.

The National Standard 1 guidelines also suggest that a Council put in place a system to establish and if necessary reduce harvest levels when a stock is someplace between MSST and MSY. This is generally known as a control rule and it is designed to correct for stock size reductions when a stock declines for whatever reason. However, while we are told to use the control rule if a stock is on the way down, we are not allowed to use that same control rule once a stock dips below MSST and is designated as overfished, even if it rebuilds to a point between MSST and MSY where normally it would fall under that control rule.

Ironically, NMFS essentially ignores this disconnect when they are reporting to Congress on status of stocks. For a Council and its constituent fishermen, a stock is overfished once it dips below MSST and stays overfished (and subject to a rebuilding plan) until it hits MSY. For NMFS, once a stock gets above

MSST, it is no longer overfished, it is "rebuilding." While this sounds great in the media bites, it doesn't help the fisherman or processor who is trying to make a living.

Again, if we had the flexibility to switch from a rebuilding plan to an established, scientifically recommended and legally approved control rule, we could provide some relief.

A third problem resides with the arbitrary 10 year maximum rebuilding time for species that don't meet certain exceptions. In the Pacific Council region, this has not been an overwhelming problem yet as most of our overfished species are long lived and do meet the exceptions. However, we cannot in good conscience support continued reliance on a number that was picked to apply nationally because some scientists theorized that was how long it would take George's Bank cod stocks to rebuild. And as you may have noticed, their theories were wrong.

Let me conclude my remarks on this aspect of the MSFCMA by emphasizing that we are not advocating an end to efforts to rebuild stocks nor do we suggest that catch limits on overfished – or even healthy – stocks be set as high as anyone wants. All we are suggesting is that there be some practical application of the rules and that our fisheries managers have the flexibility they need to deal with unique circumstances.

Flexibility in annual catch limits

We think catch limits are an excellent idea; in fact we have used them long before they were required under the MSFCMA. While we may argue about what the level of allowable catch might be at any given time, the concept is a good one, keeping in mind that there are some very short lived species where setting a limit makes little sense if you have other rules in place to adequately protect stock productivity.

Where we believe flexibility would help is in the concept of "annual" catch limits. As required by law, a catch limit must be set for each fishing year (however that period is defined in a fishery management plan). If you have a biennial plan, you still must establish a catch limit for each of the two years, no exceptions. We believe some latitude should be provided so you could have a multiple year period in which an overall limit would be set but annual harvest could fluctuate based on fishing conditions, market conditions, weather, water temperature, and any of the multitudes of other variables that affect harvest. Obviously, such a multi-year program would require rigorous scientific analysis, sufficient survey or other data gathering capabilities, and robust stock assessments. However, if the proper scientific constraints are in place, we see no reason to specify that harvest levels must be set each and every year.

Overfished vs. overfishing

Under section 3(34), these two terms are given the same definition. In reality, they are not the same thing and the responses to each of them should be different. Further, the inappropriate use of these terms unfairly maligns the commercial, sport, and tribal fishing sectors, especially when reported in the media.

"Overfishing" refers to how hard you are fishing. If you are overfishing, you are catching fish faster than stocks can replenish themselves. "Overfished" refers to how many fish you have in a stock relative to a number that can sustain that stock and may bear no relationship to the level or rate of harvest. For example, a stock might be subject to minimal or even zero fishing yet still become overfished due to predation, disease, changes in water temperature, or lowered ocean productivity. Yet when the public is told that a stock is overfished, it's the fisherman who gets the blame.

We recommend the MSFCMA be amended to provide separate and appropriate definitions for these two terms. Further, we suggest a more accurate term such as "depleted" be adopted to replace "overfished" as was recently recommended in a paper presented by Dr. Andre Punt of the University of Washington at the "Managing Our Nation's Fisheries" conference.

Relationship between the MSFCMA and other laws

One of the biggest procedural headaches we face in the Pacific Council area is the dual and mainly redundant requirement to comply with the process requirements of the National Environmental Policy Act (NEPA) while simultaneously ensuring that the proper scientific analysis and public transparency required by the MSFCMA are followed.

How bad is the problem? While this hearing is being convened, the Pacific Council is starting its September meeting. At that meeting, the Council will begin the formal decision-making process for harvest levels and associated management measures for Pacific groundfish that will go into effect in 2015 and 2016. They will be using the most up-to-date stock assessments available, which means at best looking at data collected through 2012. In other words, by the end of 2016 we will be managing our fisheries – in the best case scenario – based on four-year-old data. For those species where a current stock assessment is not available, the basic data will be even older.

Obviously, if we had all the money and people we needed, our data collection and analysis would be up-to-the minute on every one of the 100+ species currently covered by the Pacific groundfish fishery management plan. Nevertheless, it shouldn't take 15 months to put in place regulations for a fishery, no matter how good or bad our data may be. Unfortunately, the reason it takes so long is that we are required to meet the processes and timelines of both the MSFCMA and NEPA.

To offer another example of how bureaucratically silly this gets, several years ago the Council – with the full support of both the fishing community and environmental groups – wanted to establish a depth based management line that would expand a closed area in order to protect a sensitive stock of fish. The line would have gone into effect in the middle of a fishing year. The MSFCMA said we could do that, and in fact it encourages such conservation measures. Our fishery management plan said we could do it. But the lawyers said we couldn't. Why? Because we had not appropriately analyzed the possibility of establishing that precise depth line in the environmental impact statement that accompanied the regulations that went into effect at the beginning of the fishing year. We could establish a deeper line offering less protection. We could establish a shallower line to protect far more water than needed and result in adverse impacts to commercial and recreational fishing. But we couldn't establish the line that would work and would make sense.

While we have now fixed that particular problem – the committee would no doubt be amazed at the number of depth lines that have been excruciatingly analyzed under NEPA – the underlying problem remains and needs to be fixed.

The MSFCMA provides for rigorous scientific analysis and documentation of decisions. Councils – both at their own meetings and through their required advisory committees – provide significant opportunities for public comment. Council material is readily available to the public and Council meetings are recorded and often live web-cast. Post-Council regulatory actions by NMFS are guided by the Administrative Procedures Act and provide for even more public participation. The Councils, their advisors, the public, and NMFS have a full set of economic and environmental data available before decisions are made, with trade-offs fully recognized. These are the same things that are required by NEPA.

In 2006, when Congress last amended the MSFCMA, an environmental review process provision was added under section 304 to conform timelines and procedures under NEPA and the MSFCMA. Seven years later, no effective process has been put in place. It's past time to fix the problem so we can go about conserving and managing fish stocks, not worrying about paperwork.

A second problem we have in the Pacific Council area regarding the relationship to other laws is the lack of clarity and disputed jurisdiction between the MSFCMA fishery management system and the National Marine Sanctuaries Act (NMSA).

As mentioned above, we have five National Marine Sanctuaries off the west coast. At issue is who controls fishing within those sanctuaries and under what process. As currently interpreted by NOAA – which is the overarching agency for both NMFS and the National Marine Sanctuary program – a Sanctuary that wishes to do something involving fishing will first invite the Council to develop regulations. If the Council doesn't do so, can't do so quickly enough because of the lengthy Council decision-making process established to ensure public participation and exacerbated by NEPA requirements, or simply does something the Sanctuary doesn't like, then the Sanctuary can go ahead and do what it wants as long as it is consistent with the NMSA and the Sanctuary's own designation documents.

To date – other than in one egregious case involving the Channel Islands National Marine Sanctuary where some brilliant legal mind decided the Council had jurisdiction over the ocean floor and possibly the surface of the ocean, but not the water column itself – we have maintained a somewhat uneasy truce with the Sanctuary program. However, many in the commercial, sport, and tribal fishing sectors would like to see the law amended to make clear that when it comes to regulations affecting fishing – including the establishment of closed areas – the MSFCMA process will be the one used. We hope the committee will strongly consider this as they move forward with a reauthorization bill.

Sustainability

Many of us in the seafood industry are becoming increasingly concerned that the only seafood products considered "sustainable" by federal agencies are those certified as such by private companies and non-governmental organizations who maintain their own criteria and often their own political agendas. A recent example is the decision by the National Park Service to require its vendors to only provide and serve seafood which carries a certification label from the Marine Stewardship Council or is approved by the Monterey Bay Aquarium's Seafood Watch program. It is ironic that visitors to Crater Lakes National Park in Oregon will be unable to eat trawl-caught Oregon rockfish because those fish meet neither criterion even though they are subject to rigorous management under the MSFCMA.

We suggest that the MSFCMA be amended to define sustainable seafood as any fish - or product produced therefrom - that has been legally harvested by a vessel of the United States under a fishery management plan approved under the MSFMCA, under an equivalent state law or regulation, or under an international agreement to which the United States is a party and which establishes conservation and management measures equivalent to those required by the MSFCMA. Further, the Secretary of Commerce should be given the authority to design and make available a label which may be used without charge to identify sustainable seafood.

Dungeness crab fishery

Finally, I need to make mention of a provision of the MSFCMA that affects only the three Pacific coast states and which needs renewal. Section 306 note provides specific limited authority for the states of Washington, Oregon, and California to manage the Dungeness crab fishery in both their respective state waters and adjoining federal waters. This section was enacted in its original form in 1996 and slightly amended and renewed in 2006. It is currently set to expire in 2016.

Our Pacific coast Dungeness crab fishery is a major success story, in no small part due to the cooperative management that is enabled by the provisions of this section. While there are – and always will be – occasional minor disputes among fishermen and even state agencies, the resource overall is in good shape, the industry overall is economically healthy, we have excellent opportunities for sport harvest, and we have provisions for meeting treaty obligations to the four Washington State coastal tribes who have legally acknowledged fishing rights.

At the last meeting of the Tri-State Dungeness Crab Committee earlier this year – the umbrella committee set up through the Pacific States Marine Fisheries Commission to coordinate crab research and management – there was unanimous support among crab fishermen, crab processors, and state fish and wildlife agencies for renewal of this section of the law. I expect similar support will be expressed when the full Marine Fisheries Commission meets later this month. We join all of those groups in asking that you extend this section indefinitely or at a minimum for another 10 years.

Mr. Chairman, this concludes my testimony. We look forward to working with you, committee members, and committee staff in developing a thoughtful set of amendments to the MSFCMA that will provide our fisheries managers with the flexibility that they need to provide both fisheries harvest and appropriate science-based conservation of our fish stocks. I would be happy to answer any questions.